



28           **62A-11-304.6**, Utah Code Annotated 1953

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30 *Be it enacted by the Legislature of the state of Utah:*

31           Section 1. Section **30-3-5** is amended to read:

32           **30-3-5. Disposition of property -- Maintenance and health care of parties and**  
33 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
34 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

35           (1) When a decree of divorce is rendered, the court may include in it equitable orders  
36 relating to the children, property, debts or obligations, and parties. The court shall include the  
37 following in every decree of divorce:

38           (a) an order assigning responsibility for the payment of reasonable and necessary  
39 medical and dental expenses of the dependent children;

40           (b) if coverage is or becomes available at a reasonable cost, an order requiring the  
41 purchase and maintenance of appropriate health, hospital, and dental care insurance for the  
42 dependent children;

43           (c) pursuant to Section 15-4-6.5:

44           (i) an order specifying which party is responsible for the payment of joint debts,  
45 obligations, or liabilities of the parties contracted or incurred during marriage;

46           (ii) an order requiring the parties to notify respective creditors or obligees, regarding  
47 the court's division of debts, obligations, or liabilities and regarding the parties' separate,  
48 current addresses; and

49           (iii) provisions for the enforcement of these orders; [~~and~~]

50           (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
51 Recovery Services[-]; and

52           (e) provisions to include fees pursuant to Section 62A-11-304.6 as part of the support  
53 order when one or both parties are receiving child support services as defined in Subsection  
54 62A-11-103(2).

55           (2) The court may include, in an order determining child support, an order assigning  
56 financial responsibility for all or a portion of child care expenses incurred on behalf of the  
57 dependent children, necessitated by the employment or training of the custodial parent. If the  
58 court determines that the circumstances are appropriate and that the dependent children would

59 be adequately cared for, it may include an order allowing the noncustodial parent to provide  
60 child care for the dependent children, necessitated by the employment or training of the  
61 custodial parent.

62 (3) The court has continuing jurisdiction to make subsequent changes or new orders for  
63 the custody of the children and their support, maintenance, health, and dental care, and for  
64 distribution of the property and obligations for debts as is reasonable and necessary.

65 (4) Child support, custody, visitation, and other matters related to children born to the  
66 mother and father after entry of the decree of divorce may be added to the decree by  
67 modification.

68 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents  
69 and other members of the immediate family, the court shall consider the best interest of the  
70 child.

71 (b) Upon a specific finding by the court of the need for peace officer enforcement, the  
72 court may include in an order establishing a parent-time or visitation schedule a provision,  
73 among other things, authorizing any peace officer to enforce a court-ordered parent-time or  
74 visitation schedule entered under this chapter.

75 (6) If a petition for modification of child custody or parent-time provisions of a court  
76 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'  
77 fees expended by the prevailing party in that action, if the court determines that the petition  
78 was without merit and not asserted or defended against in good faith.

79 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a  
80 visitation order by a grandparent or other member of the immediate family where a visitation or  
81 parent-time right has been previously granted by the court, the court may award to the  
82 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing  
83 party because of the other party's failure to provide or exercise court-ordered visitation or  
84 parent-time.

85 (8) (a) The court shall consider at least the following factors in determining alimony:

- 86 (i) the financial condition and needs of the recipient spouse;
- 87 (ii) the recipient's earning capacity or ability to produce income;
- 88 (iii) the ability of the payor spouse to provide support;
- 89 (iv) the length of the marriage;

90 (v) whether the recipient spouse has custody of minor children requiring support;

91 (vi) whether the recipient spouse worked in a business owned or operated by the payor  
92 spouse; and

93 (vii) whether the recipient spouse directly contributed to any increase in the payor  
94 spouse's skill by paying for education received by the payor spouse or allowing the payor  
95 spouse to attend school during the marriage.

96 (b) The court may consider the fault of the parties in determining alimony.

97 (c) As a general rule, the court should look to the standard of living, existing at the  
98 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the  
99 court shall consider all relevant facts and equitable principles and may, in its discretion, base  
100 alimony on the standard of living that existed at the time of trial. In marriages of short  
101 duration, when no children have been conceived or born during the marriage, the court may  
102 consider the standard of living that existed at the time of the marriage.

103 (d) The court may, under appropriate circumstances, attempt to equalize the parties'  
104 respective standards of living.

105 (e) When a marriage of long duration dissolves on the threshold of a major change in  
106 the income of one of the spouses due to the collective efforts of both, that change shall be  
107 considered in dividing the marital property and in determining the amount of alimony. If one  
108 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
109 the marriage, the court may make a compensating adjustment in dividing the marital property  
110 and awarding alimony.

111 (f) In determining alimony when a marriage of short duration dissolves, and no  
112 children have been conceived or born during the marriage, the court may consider restoring  
113 each party to the condition which existed at the time of the marriage.

114 (g) (i) The court has continuing jurisdiction to make substantive changes and new  
115 orders regarding alimony based on a substantial material change in circumstances not  
116 foreseeable at the time of the divorce.

117 (ii) The court may not modify alimony or issue a new order for alimony to address  
118 needs of the recipient that did not exist at the time the decree was entered, unless the court  
119 finds extenuating circumstances that justify that action.

120 (iii) In determining alimony, the income of any subsequent spouse of the payor may not

121 be considered, except as provided in this Subsection (8).

122 (A) The court may consider the subsequent spouse's financial ability to share living  
123 expenses.

124 (B) The court may consider the income of a subsequent spouse if the court finds that  
125 the payor's improper conduct justifies that consideration.

126 (h) Alimony may not be ordered for a duration longer than the number of years that the  
127 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating  
128 circumstances that justify the payment of alimony for a longer period of time.

129 (9) Unless a decree of divorce specifically provides otherwise, any order of the court  
130 that a party pay alimony to a former spouse automatically terminates upon the remarriage or  
131 death of that former spouse. However, if the remarriage is annulled and found to be void ab  
132 initio, payment of alimony shall resume if the party paying alimony is made a party to the  
133 action of annulment and his rights are determined.

134 (10) Any order of the court that a party pay alimony to a former spouse terminates  
135 upon establishment by the party paying alimony that the former spouse is cohabitating with  
136 another person.

137 Section 2. Section **62A-11-104** is amended to read:

138 **62A-11-104. Duties of office.**

139 The office has the following duties:

140 (1) to provide child support services if:

141 (a) the office has received an application for child support services;

142 (b) the state has provided public assistance; or

143 (c) a child lives out of the home in the protective custody, temporary custody, or  
144 custody or care of the state;

145 (2) to carry out the obligations of the department contained in this chapter and in Title  
146 78, Chapters 45, Uniform Civil Liability for Support Act, Chapter [~~45a,~~ 45g, Utah Uniform  
147 Parentage Act [~~on Paternity~~], and Chapter 45f, Uniform Interstate Family Support Act, for the  
148 purpose of collecting child support;

149 (3) to collect money due the department which could act to offset expenditures by the  
150 state;

151 (4) to cooperate with the federal government in programs designed to recover health

152 and social service funds;

153 (5) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution,  
154 and reimbursable expenses owed to the state or any of its political subdivisions, if the office  
155 has contracted to provide collection services;

156 (6) to implement income withholding for collection of child support in accordance with  
157 Part 4, Income Withholding in IV-D Cases, of this chapter;

158 (7) to enter into agreements with financial institutions doing business in the state to  
159 develop and operate, in coordination with such financial institutions, a data match system in the  
160 manner provided for in Section 62A-11-304.5;

161 (8) to establish and maintain the state case registry in the manner required by the Social  
162 Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:

163 (a) the amount of monthly or other periodic support owed under the order, and other  
164 amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under  
165 the order;

166 (b) any amount described in Subsection (8)(a) that has been collected;

167 (c) the distribution of collected amounts;

168 (d) the birth date of any child for whom the order requires the provision of support; and

169 (e) the amount of any lien imposed with respect to the order pursuant to this part;

170 (9) to contract with the Department of Workforce Services to establish and maintain  
171 the new hire registry created under Section 35A-7-103;

172 (10) to determine whether an individual who has applied for or is receiving cash  
173 assistance or Medicaid is cooperating in good faith with the office as required by Section  
174 62A-11-307.2;

175 (11) to finance any costs incurred from collections, fees, General Fund appropriation,  
176 contracts, and federal financial participation; ~~and~~

177 (12) to establish fees pursuant to Section 62A-11-304.6; and

178 ~~[(12)]~~ (13) to provide notice to a noncustodial parent in accordance with Section  
179 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of  
180 nonpayment of past-due child support, prior to taking action against a noncustodial parent to  
181 collect the alleged past-due support.

182 Section 3. Section **62A-11-304.2** is amended to read:

183           **62A-11-304.2. Issuance or modification of administrative order -- Compliance**  
 184 **with court order -- Authority of office -- Stipulated agreements -- Notification**  
 185 **requirements.**

186           (1) Through an adjudicative proceeding the office may issue or modify an  
 187 administrative order that:

188           (a) determines paternity;

189           (b) determines whether an obligor owes support;

190           (c) determines temporary orders of child support upon clear and convincing evidence  
 191 of paternity in the form of genetic test results or other evidence;

192           (d) requires an obligor to pay a specific or determinable amount of present and future  
 193 support;

194           (e) determines the amount of past-due support;

195           (f) orders an obligor who owes past-due support and is obligated to support a child  
 196 receiving public assistance to participate in appropriate work activities if the obligor is  
 197 unemployed and is not otherwise incapacitated;

198           (g) imposes a penalty authorized under this chapter;

199           (h) determines an issue that may be specifically contested under this chapter by a party  
 200 who timely files a written request for an adjudicative proceeding with the office; [~~and~~]

201           (i) renews an administrative judgment[-]; and

202           (j) establishes fees pursuant to Section 62A-11-304.6 as part of the support order when

203 ~~H~~→ [~~one or both parties are receiving~~] **providing** ←~~H~~ child support services as defined

203a in Subsection

204 62A-11-103(2).

205           (2) (a) An abstract of a final administrative order issued under this section or a notice  
 206 of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

207           (b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

208           (i) docket the abstract or notice in the judgment docket of the court and note the time of  
 209 receipt on the abstract or notice and in the judgment docket; and

210           (ii) at the request of the office, place a copy of the abstract or notice in the file of a  
 211 child support action involving the same parties.

212           (3) If a judicial order has been issued, the office may not issue an order under  
 213 Subsection (1) that is not based on the judicial order, except:

214 (a) the office may establish a new obligation in those cases in which the juvenile court  
 215 has ordered the parties to meet with the office to determine the support pursuant to Section  
 216 78-3a-906; or

217 (b) the office may issue an order of current support in accordance with the child support  
 218 guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

219 (4) The office may proceed under this section in the name of this state, another state  
 220 under Section 62A-11-305, any department of this state, the office, or the obligee.

221 (5) The office may accept voluntary acknowledgment of a support obligation and enter  
 222 into stipulated agreements providing for the issuance of an administrative order under this part.

223 (6) The office may act in the name of the obligee in endorsing and cashing any drafts,  
 224 checks, money orders, or other negotiable instruments received by the office for support.

225 (7) The obligor shall, after a notice of agency action has been served on him in  
 226 accordance with Section 63-46b-3, keep the office informed of:

227 (a) his current address;

228 (b) the name and address of current payors of income;

229 (c) availability of or access to health insurance coverage; and

230 (d) applicable health insurance policy information.

231 Section 4. Section **62A-11-304.6** is enacted to read:

232 **62A-11-304.6. Rulemaking authority -- Fees -- Restricted account.**

233 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
 234 office may enact rules to charge fees necessary to ~~fund~~ **fund** the state's portion of supplement ~~the~~  
 234a the cost of  
 235 administering the child support services program. Any fees implemented under this section  
 236 shall comply with federal regulations under Part D of Title IV of the Social Security Act, 42  
 237 U.S.C. Section 651, et seq.

238 (2) Fees enacted under Subsection (1) may be charged to:

239 (a) noncustodial parents;

240 (b) custodial parents;

241 (c) legal guardians; and

242 (d) putative or presumed fathers.

243 Section 5. Section **62A-11-401** is amended to read:

244 **62A-11-401. Definitions.**

245 As used in this part and in Part 5, Income Withholding in Non IV-D Cases:

246 (1) "Business day" means a day on which state offices are open for regular business.

247 (2) "Child" is defined in Section 62A-11-303.

248 (3) "Child support" means a base child support award as defined in Subsection  
 249 78-45-2(4), or a financial award for uninsured monthly medical expenses, ordered by a tribunal  
 250 for the support of a child, including current periodic payments, all arrearages which accrue  
 251 under an order for current periodic payments, and sum certain judgments awarded for  
 252 arrearages, medical expenses, ~~Ĥ~~→ [f] and [j] ←~~Ĥ~~ child care costs ~~Ĥ~~→ [~~and fees established~~  
 252a under Section

253 ~~62A-11-304.6~~ ←~~Ĥ~~ . Child support includes obligations ordered by a tribunal for the support of a  
 254 spouse or former spouse with whom the child resides if the spousal support is collected with  
 255 the child support.

256 (4) "Child support order" or "support order" means a judgment, decree, or order,  
 257 whether temporary, final, or subject to modification, issued by a tribunal for child support and  
 258 related costs and fees, interest and penalties, income withholding, attorneys' fees, and other  
 259 relief.

260 (5) "Child support services" is defined in Section 62A-11-103.

261 (6) "Delinquent" or "delinquency" means that child support in an amount at least equal  
 262 to current child support payable for one month is overdue.

263 (7) "Immediate income withholding" means income withholding without regard to  
 264 whether a delinquency has occurred.

265 (8) "Income" is defined in Section 62A-11-103.

266 (9) "Jurisdiction" means a state or political subdivision of the United States, a territory  
 267 or possession of the United States, the District of Columbia, the Commonwealth of Puerto  
 268 Rico, an Indian tribe or tribal organization, or any comparable foreign nation or political  
 269 subdivision.

270 (10) "Obligee" is defined in Section 62A-11-303.

271 (11) "Obligor" is defined in Section 62A-11-303.

272 (12) "Office" is defined in Section 62A-11-103.

273 (13) "Payor" means an employer or any person who is a source of income to an obligor.

274 Section 6. Section ~~78-45-2~~ is amended to read:

275 **78-45-2. Definitions.**

276 As used in this chapter:

277 (1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

278 (2) "Administrative agency" means the Office of Recovery Services or the Department  
279 of Human Services.

280 (3) "Administrative order" means an order that has been issued by the Office of  
281 Recovery Services, the Department of Human Services, or an administrative agency of another  
282 state or other comparable jurisdiction with similar authority to that of the office.

283 (4) "Base child support award" means the award that may be ordered and is calculated  
284 using the guidelines before additions for medical expenses and work-related child care costs.

285 (5) "Base combined child support obligation table," "child support table," "base child  
286 support obligation table," "low income table," or "table" means the appropriate table in Section  
287 78-45-7.14.

288 (6) "Child" means:

289 (a) a son or daughter under the age of 18 years who is not otherwise emancipated,  
290 self-supporting, married, or a member of the armed forces of the United States;

291 (b) a son or daughter over the age of 18 years, while enrolled in high school during the  
292 normal and expected year of graduation and not otherwise emancipated, self-supporting,  
293 married, or a member of the armed forces of the United States; or

294 (c) a son or daughter of any age who is incapacitated from earning a living and, if able  
295 to provide some financial resources to the family, is not able to support self by own means.

296 (7) "Child support" means a base child support award as defined in [~~Section 78-45-2~~]  
297 Subsection (4), or a monthly financial award for uninsured medical expenses, ordered by a  
298 tribunal for the support of a child, including current periodic payments, all arrearages which  
299 accrue under an order for current periodic payments, and sum certain judgments awarded for  
300 arrearages, medical expenses, ~~Ĥ~~→ [f] and [j] ←~~Ĥ~~ child care costs ~~Ĥ~~→ [~~and fees established~~  
300a under Section

301 62A-11-304.6] ←~~Ĥ~~ .

302 (8) "Child support order" or "support order" means a judgment, decree, or order of a  
303 tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable,  
304 whether incidental to a proceeding for divorce, judicial or legal separation, separate  
305 maintenance, paternity, guardianship, civil protection, or otherwise which:

306 (a) establishes or modifies child support;

307 (b) reduces child support arrearages to judgment; or  
308 (c) establishes child support or registers a child support order under Title 78, Chapter  
309 45f, Uniform Interstate Family Support Act.

310 (9) "Child support services" or "IV-D child support services" means services provided  
311 pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

312 (10) "Court" means the district court or juvenile court.

313 (11) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through  
314 78-45-7.21.

315 (12) "Income" means earnings, compensation, or other payment due to an individual,  
316 regardless of source, whether denominated as wages, salary, commission, bonus, pay,  
317 allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive  
318 pay. "Income" includes:

319 (a) all gain derived from capital assets, labor, or both, including profit gained through  
320 sale or conversion of capital assets;

321 (b) interest and dividends;

322 (c) periodic payments made under pension or retirement programs or insurance policies  
323 of any type;

324 (d) unemployment compensation benefits;

325 (e) workers' compensation benefits; and

326 (f) disability benefits.

327 (13) "Joint physical custody" means the child stays with each parent overnight for more  
328 than 30% of the year, and both parents contribute to the expenses of the child in addition to  
329 paying child support.

330 (14) "Medical expenses" means health and dental expenses and related insurance costs.

331 (15) "Obligee" means an individual, this state, another state, or another comparable  
332 jurisdiction to whom child support is owed or who is entitled to reimbursement of child  
333 support or public assistance.

334 (16) "Obligor" means any person owing a duty of support.

335 (17) "Office" means the Office of Recovery Services within the Department of Human  
336 Services.

337 (18) "Parent" includes a natural parent, or an adoptive parent.

338           (19) "Split custody" means that each parent has physical custody of at least one of the  
339 children.

340           (20) "State" includes any state, territory, possession of the United States, the District of  
341 Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable  
342 domestic or foreign jurisdiction.

343           (21) "Third party" means an agency or a person other than the biological or adoptive  
344 parent or a child who provides care, maintenance, and support to a child.

345           (22) "Tribunal" means the district court, the Department of Human Services, Office of  
346 Recovery Services, or court or administrative agency of any state, territory, possession of the  
347 United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American  
348 Tribe, or other comparable domestic or foreign jurisdiction.

349           (23) "Work-related child care costs" means reasonable child care costs for up to a  
350 full-time work week or training schedule as necessitated by the employment or training of a  
351 parent under Section 78-45-7.17.

352           (24) "Worksheets" means the forms used to aid in calculating the base child support  
353 award.

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**Legislative Review Note**  
**as of 1-20-06 11:03 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**State Impact**

This legislation authorizes but does not require the Office of Recovery Services to enact rules to charge fees to replace some or all of the state funding. Total state funding is about \$11.7 million. However, if the Office of Recovery Services decides to replace fees (dedicated credits) for the state portion, approximately two-thirds of such collections would result in a dollar for dollar reduction in federal funds. Dedicated credits may not be used for match.

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**Individual and Business Impact**

If fees were increased, there would be an impact on either custodial or non-custodial parents, legal guardians or the punitive parent.

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**Office of the Legislative Fiscal Analyst**